

EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 -----x

5 DOROTHY FORTH, CYNTHIA RUSSO,
6 INTERNATIONAL BROTHERHOOD OF
7 ELECTRICAL WORKERS LOCAL 38
8 HEALTH AND WELFARE FUND, LISA
9 BULLARD, STEAMFITTERS FUND LOCAL
10 439, INTERNATIONAL UNION OF
11 OPERATING ENGINEERS LOCAL 295-
12 295C WELFARE FUND, and RICARDO
13 GONZALES, On Behalf of Themselves and
14 All Others Similarly Situated,
15 Plaintiffs,

16 vs. Case No. 1:17-cv-02246
17 WALGREEN CO.,
18 Defendant.

19 -----x

20 VIDEOTAPE DEPOSITION OF
21 JAMES DEVINE
22 VIA ZOOM TELECONFERENCE
23 Tuesday, July 14, 2020
24 9:58 a.m.
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Reported by:
Maureen Ratto, RPR, CCR

* * *

Deposition of JAMES DEVINE, held
via Zoom Teleconference, hosted by
ROBBINS, GELLER, RUDMAN & DOWD, LLP,
pursuant to notice, before Maureen
Ratto, Certified Court Reporter,
License No. XI01165, Registered
Professional Reporter, License No.
817125, and Notary Public.

* * *

1 A P P E A R A N C E S:

2

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24 RON MARRAZZO, Legal Video Specialist

25 PAUL BAKER, Technical Concierge

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Q. Let me show you her e-mail
where she says this.

Mr. Devine, this is not one of
the exhibits that's tabbed, that says
tabbed on your paper folder. This is an
exhibit that's -- it just has the Bates
number on the front.

A. Okay.

Q. So when you take out your
stack they're in Bates number, they start
from lowest to highest and the Bates
number of the document I want you to
find, it ends in -35610.

1 true. There was a lot of marketing around
2 the savings guarantee and we're going to
3 look at that. Let me move on.

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1 A. I have not.

2 Q. But you accept that Walgreens
3 has admitted that they marketed and
4 advertised a PSC to potential PSC
5 customers as risk free, right --

6 MS. COLEMAN: Objection to
7 form.

8 Q. -- because of the savings
9 guarantee?

10 A. Okay.

11 Q. And you, yourself, used those
12 words at least once.

13 Would you agree that the
14 purpose of a savings guarantee is to give
15 the consumer confidence that they're
16 going to realize savings relative to cash
17 through the PSC?

18 MS. COLEMAN: Objection, form.

19 A. Yes.

20 Q. And specifically, because the
21 savings guarantee relates to the
22 enrollment fee, that Walgreens wanted to
23 give the consumer confidence that they
24 would save at least the amount of the
25 enrollment fee by joining the PSC; is

1 that correct?

2 MS. COLEMAN: Objection to
3 form.

4 A. Over the course of the year,
5 yes.

6 Q. Over the course of the year,
7 okay.

8 So if over the course of the
9 year Walgreens was guaranteeing that the
10 consumer would save at least the amount
11 of the enrollment fee, would you agree
12 that Walgreens was trying to give the
13 consumer confidence that in practice
14 there was no financial risk for paying
15 the \$20 enrollment fee?

16 MS. COLEMAN: Objection to
17 form.

18 A. Yes. I guess guarantee is a
19 guarantee.

20 Q. Okay. Perfect. And we talked
21 about this before, reinforcing value.

22 When you guys were
23 conceptualizing PSC 2.0 was part of the
24 idea that the savings guarantee could be
25 used at the pharmacy counter to overcome

1 potential objections by the consumer
2 about the \$20 enrollment fee?

3 MS. COLEMAN: Objection to
4 form.

5 A. I guess it could be. It
6 depends on, you know, how the pharmacy
7 tech or the pharmacist addressed it with
8 the customer, but it could be.

9 Q. Okay.

10 A. You know, they would go
11 through all the benefits.

12 MR. DWOSKIN: Okay. Cool. So I
13 think now would be a good time to
14 take a break. I'm kind of hungry
15 for lunch. Does that work for you
16 guys?

17 THE WITNESS: Yes.

18 MS. COLEMAN: Sounds good.

19 MR. DWOSKIN: Just remember to
20 mute your line. Selina, what would
21 be a good time to come back, 30
22 minutes?

23 MS. COLEMAN: I don't know, a
24 little longer to be on the safe
25 side. Let's say maybe for us 1:20

1 ending Bates 363.

2 A. Okay. I'm there.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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4 [REDACTED] [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9 Q. Okay. So this PowerPoint is
10 from April 30th, 2015. You were still at
11 Walgreens at that time, right?

12 A. I think I was but I was not
13 involved in PSC anymore.

14 Q. You were not involved in PSC?

15 A. No.

16 Q. Do you know who would have
17 taken over for you at that time?

18 A. Yeah. It would have been a guy
19 by the name of Dale, I think maybe, Drizd
20 or Drazd or something like that and
21 another name Irna Messick, those two
22 people.

23 Q. Okay. Let's put that exhibit
24 away.

25 MR. DWOSKIN: Paul, can you

1 introduce tab 6?

2 MR. BAKER: One moment. You
3 can refresh.

4 (Exhibit 288, e-mail re:
5 Background Information on PSC,
6 Bates Walgreens-Forth 00060136,
7 with attached presentation,, was
8 received and marked on this date
9 for identification.)

10 Q. I'm going to ask the court
11 reporter to introduce as Exhibit 288 a
12 document Bates stamped Walgreens-Forth
13 00060136, which is an e-mail from Jim
14 Devine to Mike Suwalski titled Background
15 Information on PSC, dated June 6, 2013.
16 The e-mail attaches a PowerPoint
17 presentation Bates stamped
18 Walgreens-Forth 00060139 entitled
19 Prescription Savings Club White paper.

20 Mr. Devine, do you recognize
21 this document?

22 A. Not particularly, but I could
23 have, yeah. Somewhat, I guess. I'm not
24 familiar with it totally, no.

25 MS. COLEMAN: I'll note for

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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12 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 A. Yes.

19 Q. Okay. So would you agree that
20 you and your team at Walgreens were
21 conscious of the fact that in order to
22 maintain and improve market share, we'll
23 say with respect to cash volume, that
24 that was one of the reasons why Walgreens
25 developed and maintained the PSC?

1 MS. COLEMAN: Objection to
2 form.

3 A. I would -- I would say that
4 one of the real reasons we were losing
5 volume was impact of competitive pressure
6 that was put on our cash paying customers
7 by other discount programs or other
8 pharmacies offering, for example, a \$4
9 generic or Walmart and those programs put
10 in place were causing our cash price to
11 erode and that was one of the reasons or
12 the reason why we put in PSC. It was the
13 fact that our cash volume was going down
14 and we needed to react to that and PSC
15 was the mechanism that we put in place.

16 Q. Okay. So PSC was designed to
17 maintain market share for cash paying
18 customers because you had competitors who
19 were, let's say, undercutting Walgreens;
20 is that fair to say?

21 MS. COLEMAN: Objection to
22 form.

23 A. Yes.

24 Q. Okay. And so you said that was
25 the reason why PSC was created?

1 A. PSC was created for that
2 reason and to help our uninsured
3 customers to be able to purchase their
4 medications at a competitive price.

5 [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q. Just to button up that point,
18 we talked about the market of the savings
19 guarantee. Do you remember that?

20 A. Yes.

21 Q. And we discussed how the part
22 of the marketing was to give the consumer
23 -- part of the marketing of the savings
24 guarantee was to give the consumer
25 confidence that if they paid the \$20

C E R T I F I C A T E

I, MAUREEN M. RATTO, a
Registered Professional Reporter, do
hereby certify that prior to the
commencement of the examination, JAMES
DEVINE was sworn by me to testify the
truth, the whole truth and nothing but
the truth.

I DO FURTHER CERTIFY that the
foregoing is a true and accurate
transcript of the proceedings as taken
stenographically by and before me at
the time, place and on the date
hereinbefore set forth.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor
attorney nor counsel of any of the
parties to this action, and that I am
neither a relative nor employee of such
attorney or counsel, and that I am not
financially interested in this action.



MAUREEN M. RATTO, RPR

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